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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,292	06/25/2003	Francois Lagace	ST8618US	2909
22203	7590	04/13/2006	EXAMINER	
KUSNER & JAFFE HIGHLAND PLACE SUITE 310 6151 WILSON MILLS ROAD HIGHLAND HEIGHTS, OH 44143			PERRIN, JOSEPH L	
			ART UNIT	PAPER NUMBER
			1746	

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/606,292	Applicant(s) LAGACE, FRANCOIS	
	Examiner Joseph L. Perrin, Ph.D.	Art Unit 1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. In view of applicant's amendment, the rejection of claim 9 under 35 USC 112, second paragraph, is withdrawn.
2. Applicant's arguments filed 26 January 2006 have been fully considered but they are not fully persuasive.
3. Re BIERMAIER, applicant argues that gate elements (6/10/12) of BIERMAIER do not move in response to a negative pressure condition. This is not persuasive because pressure-actuated flap valves (26/27/28) respond to a negative pressure condition. It is noted that the Examiner cited plural valves including flap valves (26/27/28) which are also claimed by applicant in claim 2 (i.e. the gate elements being flap valves). The Examiner further notes that applicant's reliance on the intended use of the valves (i.e. controlling fluid flow via responsive pressure) is intended use and afforded little patentable weight. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In the instant case, since the flap valves of BIERMAIER are fully capable of responding to negative pressure, BEIRMAIER reads on applicant's claimed apparatus. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959).

"[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original)

4. Re BECKER, applicant's arguments in view of the amendment is persuasive.

Accordingly, the rejection over BECKER is withdrawn.

5. Re the 103 rejection of claim 13, applicant's argument that since claim 1 is patentable dependent claim 13 is patentable is not persuasive because the rejection of claim 1 is maintained.

Claim Rejections - 35 USC § 102

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1-5 & 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,288,467 to BIERMAIER. Re claims 1-3, 6-12, BIERMAIER discloses an apparatus for cleaning and disinfecting comprising a chamber (15), plural flap valves (26/27/28) and gate elements 10/12/6), plural blowers (9/14) with the valves therein between, chambers (fluid lines 4/2/3 read on intake/exhaust chambers) between the valves and blowers (see entire document, for instance Figure 1 and relative associated text). Re claims 4-5, BIERMAIER further discloses using filters and heaters (see col. 5, lines 22-26) as well as inline filter (8). Recitation of BIERMAIER reads on applicant's claimed invention.

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over BIERMAIER in view of U.S. Patent Publication No. 2003/0036272 to SHAMOUILIAN *et al.* ("SHAMOUILIAN"). Recitation of BIERMAIER is repeated here from above. BIERMAIER discloses the claimed invention with the exception of a recirculation pump having a frequency variator to control pressure in the chamber. SHAMOUILIAN teaches that it is known to provide a cleaning apparatus with a recirculation pump having frequency varying means to recirculate treatment fluid and regulate chamber pressure (see entire document, for instance, paragraph [0106]). Therefore, the position is taken that a person of ordinary skill in the art at the time the invention was made would have been motivated to provide the cleaning system of BIERMAIER with a recirculating system having frequency varying means as disclosed in SHAMOUILIAN for the purpose of recirculating treatment fluid and the well known advantages associated therewith as well as the regulation of pressure in the treatment chamber. Moreover, the position is taken that one of ordinary skill in the art at the time the invention was made would have a reasonable expectation of success in the addition of such cleaning recirculation system (SHAMOUILIAN) to the cleaning system of BIERMAIER to achieve applicant's claimed invention, the references being analogous in the cleaning art.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

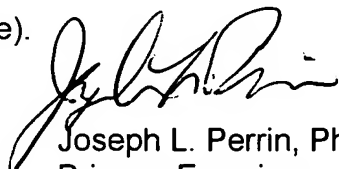
11. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 7:00-4:30, except alternate Fridays.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1746

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph L. Perrin, Ph.D.
Primary Examiner
Art Unit 1746

jlP